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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEBORAH H. BEATON,

**Plaintiff.**

V.

JPMORGAN CHASE BANK N.A.,  
NORTHWEST TRUSTEE SERVICES, INC.

### Defendants.

NO. 2:11-cv-0872-RAJ

**DEFENDANT CHASE'S REPLY  
TO PLAINTIFF'S RESPONSE TO  
CHASE'S MOTION TO DISMISS  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT AND MOTION TO  
STRIKE PLAINTIFF'S AFFIDAVIT  
OF CIVIL RIGHTS VIOLATIONS  
COMMITTED**

**NOTING DATE: October 12, 2012**

## I. INTRODUCTION AND RELIEF REQUESTED

Defendant JPMorgan Chase Bank, N.A. (“Chase”) moved for dismissal of Plaintiff’s Second Amended Complaint [Dkt. 55] for failure to state a claim upon which relief may be granted, pursuant to Fed. R. Civ. P. 12(b)(6), and for release of the

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impermissible, unauthorized lien filings and instruments Plaintiff Deborah H. Beaton recorded against the real property she formerly owned. Ms. Beaton’s responsive pleading [Dkt. 59] fails to address the great majority of Chase’s arguments. In addition, Plaintiff filed an “Affidavit of Civil Rights Violations Committed,” which appears to be an attempted criminal complaint against a Chase officer. [Dkt. 60.]

Because Plaintiff waived the majority of her claims by failing to restrain the Trustee's sale, Plaintiff has not rebutted Chase's arguments supporting dismissal, Plaintiff's Affidavit is an impermissible filing in response to a dismissal motion, and Plaintiff has now had three different opportunities to correctly plead her claims, Chase requests dismissal with prejudice, and that Plaintiff's Affidavit [Dkt. 60] be stricken.

## **II. AUTHORITY AND ARGUMENT**

**A. Plaintiff's Failure to Address Chase's Arguments is an Admission of Merit.**

Plaintiff's reply briefing did not address her FDCPA claim, respond to Chase's request to expunge and dismiss her recorded instruments, mentioned her Deed of Trust Act claims only in passing, and did not rebut any of Chase's dismissal arguments.

In this District, “If a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.” (Local Rules W.D.Wash. CR 7(b)(2).) The rule applies not only when a party neglects to oppose, but opposes and neglects to provide controverting arguments. (*See, e.g., Siver v. Citimortgage, Inc.*, 830 F.Supp.2d 1194, 1200 (W.D.Wash. 2011) (“[Plaintiffs’ briefing] offered absolutely no response to [Defendant’s] motion to dismiss their breach-of-contract claim,

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1 which the court construes as an admission that the motion has merit. ... Accordingly, the  
 2 court dismisses the [Plaintiffs'] breach-of-contract claim ...."); *Hylkema v. Assoc. Credit*  
 3 *Svc., Inc.*, 2012 WL 13681, \*9 (W.D.Wash. Jan. 4, 2012) ("Plaintiff does not respond to  
 4 this argument or otherwise address his CPA claim in his opposition .... Plaintiff's failure  
 5 to respond is considered a concession that defendants' argument has merit. ... Plaintiff's  
 6 CPA claim is, accordingly, subject to dismissal on summary judgment."); *Castello v. City*  
 7 *of Seattle*, 2011 WL 6000781, \*8 (W.D.Wash. Nov. 30, 2011).

8 In view of Chase's authorities and arguments, and Ms. Beaton's failure to respond  
 9 to several claims, her Second Amended Complaint should be dismissed, with prejudice.

10 **B. Plaintiff's "Incomplete Indorsement" Claim Fails.**

11 Despite this Court's prior Order, Ms. Beaton persists in asserting that she has a  
 12 viable "incomplete indorsement" claim against Chase. She is wrong.

13 The Court previously recognized that "[Chase's] agreement with the FDIC requires  
 14 dismissal of Beaton's claims related to liability of WaMu related to loans made by  
 15 WaMu." [Dkt. 54, p. 7, ll. 4-6.] Ms. Beaton's Complaint alleges that WaMu – *not* Chase  
 16 – endorsed her Note in blank. [Dkt. 55, par. 10.] Because the Court has already held that  
 17 Chase has no liability for WaMu's action, Chase cannot be liable for Plaintiff's claims  
 18 arising from her Note's blank endorsement by WaMu.

19 To the extent that Plaintiff's "incomplete indorsement" cause of action is premised  
 20 on Chase's continued holding of the bearer Note without choosing to endorse it, those facts  
 21 do not give rise to any viable claims. Ms. Beaton did not respond to Chase's briefing

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1 analyzing the failures in such a claim. Further, her repeated assertions that Chase *must*  
 2 endorse her Note and is committing fraud by failing to do so are nothing more than a  
 3 variation of the “show me the Note” argument, which this Court previously rejected here.  
 4 [Dkt. 54, p. 5, l. 20 – p. 6, l. 2.]

5 Because RCW 62A.3-205, on which Plaintiff relies, does not apply to the present  
 6 facts, it does not serve as the basis for any cause of action against Chase. Consequently,  
 7 Plaintiff’s second cause of action should be dismissed, with prejudice.

8 **C. Deed of Trust Act Violations are Not Properly Alleged and Did Not Occur.**

9 The Court chose to construe Plaintiff’s previous DTA violation claim “as alleging a  
 10 breach by the trustee of its obligation to obtain, prior to recording the notice of trustee’s  
 11 sale, proof that the beneficiary under the deed of trust is the owner of the related  
 12 promissory note,” which could be pursued post-foreclosure. [Dkt. 54, p. 6, ll. 2-6.]  
 13 Nevertheless, the Court dismissed the claim because it was “devoid of factual allegations  
 14 that could support a potential [DTA] claim.” [Dkt. 54, p. 7, ll. 9-12.]

15 Instead of additional factual allegations, Plaintiff’s Second Amended Complaint  
 16 argues supposition, presumed intent, and nit-picks at the wording of the Beneficiary  
 17 Declaration<sup>1</sup> [Dkts. 58-6 and 59-1]. Plaintiff’s Second Amended Complaint admits  
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19 <sup>1</sup> Because Plaintiff’s Second Amended Complaint specifically refers to the Beneficiary Declaration, the  
 20 Court may consider it in ruling on Chase’s dismissal motion, without converting the motion to one for  
 21 summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 453–54 (9<sup>th</sup> Cir.), cert. den’d., 512 U.S. 1219, 114 S.Ct.  
 22 2704, 129 L.Ed.2d 832 (1994), overruled on other grounds by *Galbraith v. Co. of Santa Clara*, 307 F.3d  
 1119 (9<sup>th</sup> Cir.2002); *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405, n. 4 (9<sup>th</sup> Cir.1996) (appropriate for trial  
 23 court to consider document referenced in a complaint in a motion to dismiss and doing so does not convert  
 24 DEFENDANT CHASE’S REPLY TO BISHOP WHITE, MARSHALL & WEIBEL, P.S.  
 25 PLAINTIFF’S RESPONSE TO CHASE’S 720 OLIVE WAY, SUITE 1201  
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1 Chase's Beneficiary Declaration was provided to the Trustee [Dkt. 55, p. 6, l. 21 – p. 7, l.  
 2 10], and she herself chose to file it with the Court [Dkt. 59-1]. RCW 61.24.030(7)(a)  
 3 states, in full:

4 That, for residential real property, before the notice of trustee's sale  
 5 is recorded, transmitted, or served, the trustee *shall have proof that*  
*the beneficiary is the owner of any promissory note* or other  
 6 obligation secured by the deed of trust. A declaration by the  
 7 beneficiary made under the penalty of perjury *stating that the*  
*beneficiary is the actual holder of the promissory note* or other  
 8 obligation secured by the deed of trust *shall be sufficient proof* as  
 required under this subsection.

9 (Emphasis supplied.) Here, the Beneficiary Declaration is under penalty of perjury, and  
 10 tracks the RCW 61.24.030(7)(a) language precisely by stating Chase "is the actual holder  
 11 of the promissory note or other obligation ...." It is not defective, as a matter of law.

12 Because the Trustee received the Beneficiary Declaration before instituting  
 13 foreclosure proceedings, and because the Beneficiary Declaration was fully compliant with  
 14 RCW 61.24.030(7)(a), Plaintiff has not fleshed out her DTA violation claim against Chase  
 15 sufficiently to withstand challenge, as required and directed by this Court. Because all of  
 16 Ms. Beaton's remaining DTA violation claims depend on the same flawed allegations,  
 17 they do not state a viable cause of action. None of the nonjudicial foreclosure documents  
 18 are defective; thus, Plaintiff's DTA violation claims should be dismissed, with prejudice.

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21 the motion into one for summary judgment), *cert. den'd.*, 520 U.S. 1103, 117 S.Ct. 1105, 137 L.Ed.2d 308  
 22 (1997).

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**D. Plaintiff's Affidavit Should be Stricken.**

In connection with opposing Chase’s dismissal motion, Ms. Beaton filed an “Affidavit of Civil Rights Violations Committed,” which appears to be an attempted criminal complaint against a Chase officer. [Dkt. 60.] The Affidavit serves no purpose other than perhaps impermissibly extending the page limit for Plaintiff’s responsive pleadings without leave of Court. There is no call for evidence in “support” of a dismissal motion response, and none should be allowed. In addition, the attempted presentation of criminal charges in a civil action brings into question the motives behind such a filing.

When a party's filing is improper pursuant to local and federal rules, the Court may grant a motion to strike the filing. *LMD Integrated Logistic Services, Inc. v. Mercer Distribution Services, LLC*, 2011 WL 2670203, \*2 (W.D.Wash. July 7, 2011). This is particularly true in the case of an Affidavit filed in opposition to a dismissal motion. *Battle v. Wick*, 2008 WL 4766818, \*5 (W.D.Wash. Oct. 28, 2008) (“As to the affidavit submitted by plaintiff in support of [opposition to dismissal of] his amended complaint, the Court is not satisfied at this juncture that there is a proper purpose for admitting this document. Accordingly, defendant’s motion to strike the affidavit should be granted.”)

### III. CONCLUSION

Pursuant to Fed. R. Civ. P. 12(b)(6), Chase respectfully moves Plaintiff's Second Amended Complaint [Dkt. 55] be dismissed against Chase with prejudice, Plaintiff's Affidavit [Dkt. 60] be stricken, and the instruments recorded by Plaintiff be extinguished and released, as requested in Chase's dismissal motion.

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## **CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury of the laws of the State of Washington and  
the United States of America that on this 10<sup>th</sup> day of October, 2012, I electronically filed  
the following documents: (1) DEFENDANT CHASE'S REPLY TO PLAINTIFF'S  
RESPONSE TO CHASE'S MOTION TO DISMISS PLAINTIFF'S SECOND  
AMENDED COMPLAINT AND PLAINTIFF'S MOTION TO STRIKE AFFIDAVIT OF  
CIVIL RIGHTS VIOLATIONS COMMITTED; and (2) CERTIFICATE OF SERVICE,  
with the Clerk of the Court using the CM/ECF System, which will serve notice to all  
parties of record in this matter.

On the same date, I caused to be delivered via the United States Postal Service, a copy of the aforementioned documents, postage pre-paid, addressed to the following parties:

12 Deborah H. Beaton  
31431 46<sup>th</sup> Pl SW  
13 Federal Way WA 98023

Dated this 10<sup>th</sup> day of October, 2012, at Seattle, Washington.

/s/ Ana I. Todakonzie  
Ana I. Todakonzie

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